

## CORPORATION TAX DECLARED VALD BY HIGH COURT

Is a Levy on Doing Business  
and Insures \$25,000,000 a  
Year Revenue.

ATTACKED BY MANY.

Interborough and Coney Island  
and Brooklyn Railroads  
Must Pay the Tax.

WASHINGTON, March 12.—The constitutionality of the corporation tax provision of the Payne-Adams tariff law, one of President Taft's pet measures, was unanimously upheld today by the Supreme Court of the United States in a decision in fifteen cases arising in various parts of the United States. The decision of the Court insures approximately \$25,000,000 revenue yearly to the Federal Government.

The cases came to the Supreme Court from the Federal Courts of Vermont, New York, Illinois, Ohio, Massachusetts and Minnesota, and included corporations engaged in real estate business, mining, manufacturing, transportation, life insurance and merchandising. In each case one or more of the stockholders applied to the courts for an injunction to restrain the officers of the corporation from paying the tax on the ground that it was unconstitutional.

**Tax on Doing Business.**  
First of all, Justice Day declared that the contention that the law was unconstitutional because it originated in the Senate in the form of an amendment to the Payne law was untenable. He said the Constitution provided for amendments in the Senate to revenue laws, though they must originate in the House.

"It has been urged that this is a tax on the ownership of business," he said. "As we construe the statute, it is a tax on the doing of business, not upon ownership."

"This is an excise tax upon the privilege of doing business. The provision for an excise tax in the constitution makes only one stipulation—that the tax shall be equal—that is, geographically the same all over the country."

"It is next contended that the attempted taxation is void because it levies a tax upon the right of a State to grant corporate franchises; because it taxes franchises which are the creation of a State in its sovereign right and authority."

"We think it is the result of cases heretofore decided by this court that such activities, although exercised because of State-created franchises, are not beyond the taxing power of the United States."

The Court held that it was no part of the essential governmental functions of a State to provide means of transportation, supply artificial light, water and the like. Therefore, it was determined that the Coney Island and Brooklyn Railroads, the Interborough Rapid Transit Company and New York are subject to the tax.

**Differs From Income Tax.**  
Justice Day took up the contention that the corporation tax was a direct tax, and unconstitutional for the same reasons that the famous income tax was declared unconstitutional in 1895. He pointed out that the income tax was held to be direct because it imposed upon property simply because of its ownership.

"In the present case," said Justice Day, "the tax is not payable unless there is a carrying on or doing of business in the designated activity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the two is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way."

Justice Day next addressed himself to the objection that the tax was unequal and arbitrary. He first considered whether, as claimed, the law made an unconstitutional distinction between corporations and partnerships or individuals. He said there was a substantial difference between the carrying on of business between corporations taxed and the same business when conducted by a private firm or individual.

"The filing tax," said Justice Day, "is not the mere doing of business, but the actual transaction which is the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious and have led to the formation of such companies as nearly all branches of trade."

"It is this distinctive privilege which is the subject of taxation, not the mere doing of business or handling of goods, which may be the same, whether done by corporations or individuals."

Measurement of the tax by the net income of the corporation or the company received by it from all sources was next defended by Justice Day in his opinion, as not being so unequal and so arbitrary and needless as to fall outside of the authority of the taxing power.

**Publicity Features.**

Justice Day said it was especially objected that certain of the corporations whose stockholders challenged the validity of the tax were so-called real estate companies.

"We think it clear," said he, "that corporations organized for the purpose of doing business and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing

## THE LAND OF MAKE-BELIEVE THE CHAPERONS. By Eleanor Schorer.



the ore lands and collecting royalties managing wharves, dividing profits, and in some cases investing the surplus are engaged in doing business within the meaning of this statute and, in the capacity necessary to make such organizations, subject to the law."

After dealing at length with numerous other objections to the law, Justice Day came to the attack upon it based on the so-called publicity features of the provisions which require certain returns to be made to the government, as an aid in the assessment of the tax.

"The taxation being, as we have held," said the justice, "within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purpose of making the effectual."

The opinion thus summarized covers fifteen of the eighteen cases in which the constitutionality of the tax was assailed. The non-applicability of the law to the real estate trusts was decided in the other three cases.

The fight against the constitutionality of the corporation tax began almost immediately after the enactment of the Payne-Adams Tariff law of 1908, of which it is a part. During the long days of wrangling in Congress over that measure, President Taft originated a plan to raise part of the revenue necessary for the running of the Government by imposing a corporation tax. He is said to have made the first rough draft of the proposed law and to have asked the Department of Justice to perfect it.

Scarcely fifteen years before the Supreme Court of the United States had declared unconstitutional the Income Tax measure enacted by Congress. In order to have a valid tax, the errors of that law had to be avoided. Finally the attention of members of the House and Senate was called to the proposed Corporation tax as a constitutional measure.

It was urged as preferable to impose income tax which, it was argued, probably would be declared unconstitutional, and as under the circumstances better legislation than an inheritance tax. When the Tariff bill was in the Senate, the corporation tax provisions were inserted as an amendment to the Payne bill passed by the House. They remained there and became a part of the Tariff act.

**Those Who Pay the Tax.**  
The provisions of the law stated that the tax was a "special excise tax with respect to the carrying on or doing of business." It was to be paid by "every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company" organized under the laws of the United States or of any State or Territory.

It was provided that the tax should be "equivalent to one per centum upon the entire net income over and above \$5,000 received from all sources," exclusive of amounts received as dividends upon stock of other corporations, joint stock companies, or associations, or insurance companies, subject to the tax.

The law provided also that returns should be made by those taxed to the Treasury Department, to be used as a basis for assessing the tax. These were open to inspection, but in 1908 Congress enacted legislation providing that the returns should be open to inspection only upon rules and regulations approved by the President.

**Woman Started Fight.**  
Fifteen cases attacking the constitutionality of the law were begun in court, the first by a woman, Stella P. Pili, guardian of the property of Samuel N. Stone Jr., a stockholder in the Stone Tracy Company of Winchester, Va.

The constitutionality of the tax was attacked from all points from which any tax possible of enactment by Congress could be attacked. Prominent among the objections to the law was the argument that the tax was a direct tax, not apportioned, according to the constitution. Some dubbed the law a "corporation income tax" and levied for the same reasons that the income tax was declared unconstitutional in 1895.

## MRS. MELBER'S DEFENSE BEGINS WITH PITIFUL PLEA

Lawyer for the Woman Who  
Killed Child Tells Her Mis-  
eries From Early Life.

(Special to The Evening World.)  
ALBANY, March 12.—This poor, defenseless woman should have been in an insane asylum fifteen years ago," was the declaration of Attorney John H. Dugan in his opening address to the jury today in the trial of Mrs. Melber, charged with killing her four-year-old son after the prosecution had read its case.

"She went to school," he continued, "on to the time her father died, a drunkard, when she was thirteen years old. Her mother died several years before that. Her life since then has been desolate."

The lawyer continued in this strain, emphasizing the life miseries of the defendant up to the day she murdered her child by forcing acid into his throat.

**Hold Suiitor Within Call.**  
There was a stir among the spectators earlier in the day when Lawyer Dugan secured from Justice Howard an order requiring the presence of Howard Kirk, one of the State's chief witnesses, at all times until the testimony is closed. Mr. Dugan explained that he might want Kirk for cross-examination at any moment, and this is regarded as indicating any matters concerning the young man's relations with the defendant, whom he has not inquired into by the attorneys for either side, will be brought out after the medical experts for the defense have been on the stand.

When the trial was resumed today the main testimony for the State was before the jury, and it was expected that the defense would be able to open late today or tomorrow.

The admission of the woman's confession, made to the Rochester police, was a blow to the defense, but its effect was mitigated by the testimony drawn from State witnesses that Mrs. Melber had suffered greatly for the past six years. The attorneys for the defense expect to show that hardships and lack of even sufficient food had undermined her reason and brought her to a state of mind in which she determined upon the murder of her son.

Mrs. Melber today seemed much brighter as the result of the two-day rest. She dropped into her chair beside her counsel without paying the slightest attention to the big crowd of curiosity-seekers who jammed every inch of space in the big court room.

By order of Justice Howard the police guard about the building was doubled today and the riotous scenes that have marked the trial heretofore were absent.

The defense will call three doctors to testify that Mrs. Melber is insane, but whether they will place the defendant on the stand will not be decided until the State rests.

**Tells of Woman's Talk.**  
Detective William P. Maguire of Rochester, the first witness today, told of arresting Mrs. Melber in that city on Jan. 12, of the denial of her identity and of the questioning that led to her finally admitting who she was. His

testimony here out that given by Chief Maguire and two other Rochester officers last week concerning Mrs. Melber's story that she had given her child to a cousin, Fred Teller, to take to his home out West.

He said she did not know the address of Teller in Chicago, but she said she was trying to work her way to that city. Maguire told of noticing a scar on her right hand near her thumb which she said was caused by spilling hot water on it a week before.

When told a child had been found dead near Albany, the witness said Mrs. Melber exclaimed: "My God! if my boy has been murdered, it must have been Fred Teller that did it. Do you think I would kill my own flesh and blood?"

**Denied Buying Acid.**  
The detective said Mrs. Melber had denied ever buying carbolic acid except in the instant case, and that she had purchased some of the drug in Solonville, Ind. She told the officer she had changed the boy's clothing before giving him to Teller, and that she had found Mrs. Melber was unaccounted for as to what motive Teller would have had in killing the child. "I a witness said she told him the child was a suborn."

When Howard Frost, an eleven-year-old boy, who lives near where the Melber boy's body was found, was called the defense objected, saying he was too young to testify in a case of such gravity, but the court admitted his testimony.

He and his brother wrote on their own to the court, saying that George's shoes lying in a ditch near a path leading to the house where the body was found, showed the shoes, the youngest replied.

**State Rests Case.**  
"Then look like 'em!"  
The state rested its case today after the discovery of the body.

Chief witness sworn today included Harry E. Spradford, the hunter who discovered the body; Cooper Hill, who was called by the State; Thomas Redway, who performed the autopsy; Vernon W. Fitch, a keeper in the Albany County Jail, who said Mrs. Melber said she told him the child was a suborn; and Howard Frost, an eleven-year-old boy, who lives near where the Melber boy's body was found, who was called the defense objected, saying he was too young to testify in a case of such gravity, but the court admitted his testimony.

**REQUESTS TO HOSPITALS.**  
Three institutions endowed in will of P. W. Reinbauer.

Protestant Hospital, the German Hospital and St. John's Hospital will accept bequests from the will of Frederick W. Reinbauer of No. 121 East Sixty-third street, filed for probate today.

The will contains a provision that after the death of Mrs. Reinbauer the proceeds of the sale of the testator's real estate, less expenses of probate, shall be divided between the three institutions.

**Omega Oil**  
The Great Family Liniment

For Rheumatism, Lumbago Sprains, Bruises, Sore Throat, Cold in Chest, Asthma, Bronchitis, Difficulty in Breathing, Cold in Head and Catarrh. It gives quick relief. 10c, 25c, 50c.

## COURT DENOUNCES "PULL" THAT FAILS TO SAVE SLASHER

Judge Dike Tells How East  
Side Politicians Interfered,  
Then Sentences Culpit.

Louis Berkelheimer, who, on July 14 last, at Coney Island, seized and held Willie Jones, a prize fighter, while Aaron Lewis slashed Jones's face with a razor, was sentenced to Sing Sing for not more than four years and four months and not less than two years and two months by Judge Dike in the County Court, Brooklyn, today. Lewis had already been sentenced, as a second offender, to five years in Sing Sing and to pay a fine of \$1,000.

In imposing sentence on Berkelheimer Judge Dike, after rehearsing the circumstances of the assault, which occurred when Jones resented an insult to his wife, scored Berkelheimer for the efforts made by his friends from the east side of Manhattan to defeat the ends of justice.

The judge said that not only had attempts been made to find a personal friend of the Court in Brooklyn who would influence him, but that numerous unsavory Manhattan politicians had interfered in the case; that money had been freely spent, even to the extent of retaining William Travers Jerome, and that an effort had been made to secure a reduction of bail, with the purpose of letting Berkelheimer run away.

Berkelheimer was told that the Court had knowledge of building methods employed against witnesses in the case and of letters sent to athletic clubs threatening violence and shooting if Willie Jones was employed by any of them, as a result of which, the Court said, Jones had been forced to go to work as a longshoreman.

In conclusion he said: "Such men as you belong in the place to which you will now go; not in Brooklyn. Brooklyn is no place for Manhattan crooks. We trust that men like you will take this lesson to heart."

**5,000 Going to "Larry's" Dance.**  
More than 5,000 persons, it is expected, will attend the "Larry" Sullivan ball and dancing at the Casino next Thursday night. "Big Tim" Sullivan will lead the grand march with Mrs. Sullivan. Many city officials will be there.

**Wood Left Nearly All to Grandson.**  
The will of Martin V. Wood, filed at Minesa today, disposes of an estate of a half-million dollars. Nearly all is left to a grandson, Martin V. W. Hall, and the balance is in trust funds for the benefit of relatives, which will revert to the grandson when they expire.

Sir Wood was a Supervisor of Queens County for two terms and also president of the Hempstead Bank.

**Music Is Necessary**  
Have you realized that music is an essential factor in your life? That there is no enjoyment so personal and satisfying—no mental relaxation quite so complete?

The most popular and the most perfect means of producing music today is



**The Pianola Piano**  
The Piano and Pianola Together in One Case

The Pianola Piano can be played in either of two ways—  
By hand.  
With a Pianola music-roll.

For hand-playing it is a superb piano with tone and action of the finest quality.

Played with a music-roll, the Pianola Piano gives a performance as artistic and correct as the playing of the best pianists.

**Anyone Can Play the Pianola Piano**  
No previous knowledge of music is necessary to play the Pianola Piano.

The notes of a composition are played by the music-roll. The expression, you put in.

Good music, performed understandingly, is the highest form of intellectual enjoyment, both for performer and listeners.

This understanding of music is supplied in the Pianola Piano by the Metrostyle, a wonderful device, that enables anyone to play with true spirit and feeling.

By means of the Metrostyle the masters

New Pianos for Rent. A Complete Stock of Victor Talking Machines and Records.

**THE AEOLIAN COMPANY, Aeolian Hall**  
362 Fifth Avenue near 34th St., N. Y.

The Largest Manufacturers of Musical Instruments in the World

**Are you aware**  
the quickest and most convenient route to Baltimore and Washington from financial district of New York is the Baltimore & Ohio?

No change of cars from Jersey City; save time and annoyance.

"Every Even Hour" during the day from foot of Liberty Street.

Superior service.

**J. Ehrlich & Sons**  
It's "Penny Wise and Pound Foolish" to Delay Getting Glasses.

Eyesight never grows stronger of its own accord. Will you allow it to grow worse by neglect?

Whatever you can save by going without glasses, you would cheerfully spend many times over if you knew the eye troubles caused by delay.

**Our Registered Physicians,**  
Oculists of long experience, examine your eyes charge. WE CHARGE FOR GLASSES ONLY. Perfect-Fitting Glasses as Low as \$2.50.

**J. Ehrlich & Sons**  
Oculists, Opticians,  
222 Sixth Ave., 15th St. 359 Sixth Ave., 22d St.  
1274 Broadway, 33d St. 101 Nassau—Ann St.  
217 Broadway, Astor House, New York.  
498 Fulton St., Cor. Bond St., Brooklyn.

**Have You Noticed**  
the big display of "Lost and Found" and "Information Wanted" advertisements that are being published every week in

**THE SUNDAY WORLD,**  
on the first page of the Sunday World's "Want" Directory?

They are finding lost articles, locating missing friends, relatives, heirs of estates, &c., in rapid order.

Read Them When Interested Use Them When in Need

10c

## BRIDE'S FATHER TOO SLOW FOR YOUNG ELOPERS.

Paul M. Ridington and Bertha Dale Couldn't Wait for Fall Philadelphia Wedding.

Paul Ridington, a salesman, and Miss Bertha Dale, who was stenographer for the Presbyterian State Board in Philadelphia, met for the first time on New Year's eve, when they went with a party to hear Trinity's chimes. Mr. Ridington called on Miss Dale the following night and they became engaged.

Miss Dale's father, William Dale, objected to the engagement, and although Mrs. Dale was willing, the best Mr. Ridington could do was to obtain the father's consent to a wedding next fall. That was the way matters stood Saturday night a week ago when Mr. Ridington arrived in the Dale home. But he decided that waiting was no good, so the couple ran away to Wilmington, Del., the next morning and asked a kind-hearted policeman in the railway station for assistance. He directed them to Magistrate Robertson, who issued a license and sent them to the Rev. Eli George Kileas, No. 219 East Fifth street, who performed the ceremony.

They were forgiven at home and came on to Flushing, L. I., where Mr. Ridington engaged an apartment near the relatives. His father is ex-Judge Ridington of Rutland, Vt., who was once Assistant Corporation Counsel in this city.

**SUES FOR SCALDED ARM.**  
Theatre Porter Wants \$10,000 From Keith & Proctor.

James A. O'Connor of No. 24 East One Hundred and Twenty-fifth street demands \$10,000 damages from the Keith & Proctor Amusement Company in a suit on trial today before Justice McCall and a jury in the Supreme Court, for a badly crippled right arm.

O'Connor was employed as a porter in the Keith-Proctor theatre in East One Hundred and Twenty-fifth street, and while carrying a pail of hot water up from the engine-room to the lobby for use in scrubbing, he tripped and fell upon his right arm and side, laying him up for several months and leaving a permanent injury. If N. Hoole, in his opening address, charged that the porter's fall was due to a defective floor covering.

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**You'll get a cup of good tea every time you use**

**"SALADA" TEA**

Yearly Sales 23,000,000 Packages

**WESTON'S SEVENTY-THIRD BIRTHDAY.**  
Edward Payson Weston, champion walker, will lecture on "The Victories of a Walker" in the Grace Methodist Episcopal Church, at Amsterdam Avenue and One Hundred and Fourth street, at 8:30 on Wednesday evening to celebrate his seventy-third birthday.

**DIAMONDS**  
1 Carat \$48

POSITIVELY ALL DAY TO-MORROW—no one will be able to get a diamond ring at \$48 per carat. I will give you a diamond ring of the largest table or surface quality. Every one will want to get a diamond ring of the largest table or surface quality. Every one will want to get a diamond ring of the largest table or surface quality. Every one will want to get a diamond ring of the largest table or surface quality.

**CHARLES A. KIENE,**  
Importer and Cutter of Diamonds  
180 Broadway, New York

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